JD–84-05
Washington, DC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COASTAL INTERNATIONAL
SECURITY, INC.
Employer

and Case 5-UD-137

THEODORE W. BERRY
Petitioner

and

INTERNATIONAL UNION, SECURITY,
POLICE & FIRE PROFESSIONALS
OF AMERICA, (SPFPA), LOCAL 287

Scott A. Brooks, Esq.,
of Detroit, Michigan,
on behalf of the Union.
Theodore W. Berry,
of Upper Marlboro, Maryland,
Pro Se, on behalf of the Petitioner.

ADMINISTRATIVE LAW JUDGE DECISION
AND RECOMMENDATIONS ON OBJECTIONS

Martin J. Linsky, Administrative Law Judge: I heard this matter on October 25, 2005. Based on the evidence as a whole, including my observation of the demeanor of the witnesses, I make the following findings and conclusions.

The petition for election in this matter was filed by the Petitioner. Pursuant to a Stipulated U.D. Election Agreement, approved by the Regional Director for Region 5 on September 14, 2005, an election was conducted on September 23 and September 24, 2005 in the following unit of building guards:

> All non-supervisory employees within the unit working at the Ronald Reagan Building in Washington, D.C. excluding all other employees including office clerical employees and professional employees as defined in the National Labor Relations Act.

The unit included approximately 355 eligible voters.

The question on the ballot was as follows:

> Do you wish to withdraw the authority of your bargaining representative to require, under its agreement with the employer, that employees make certain lawful payments to the union in order to retain their jobs?

The choice of answers to the ballot question was "Yes" or "No."

A total of 103 votes were cast and the count was 51 votes cast in favor of withdrawing the authority of the bargaining representative to require, under its agreement with the employer that employees make certain lawful payments to the union in order to retain their jobs and 52 votes were cast against the above proposition.

Timely objections to the election were filed by the Petitioner with Region 5 of the National Labor Relations Board. On October 18, 2005 the Regional Director for Region 5 issued a Report on Objections and Notice of Hearing and set the matter down for a hearing on October 25, 2005. The hearing was limited to 5 Objections to Union conduct, i.e., Objections 1, 2, 3, 5, and 6 and 2 Objections to Employer conduct, i.e., Objections 4 and 7.

The petitioner appeared on behalf of himself and the Union appeared and was represented by Counsel. The Employer waived its appearance.

Two witnesses testified before me. The petitioner, Theodore W. Berry, and current Local 287 President Charmise Wicks. I found both witnesses to be quite credible. Berry works in the USAID section of the Ronald Reagan Building and Wicks works in the EPA section of the Ronald Reagan Building. Wicks became President of the union on September 14, 2005 a little more than one week before the election on the petition. The largest group of guards works in the GSA section of the Ronald Reagan Building according to the uncontradicted testimony of the Petitioner.

The vote in this case was whether or not to remove from the Union its right to enter into a union security clause requiring employees to join the union and pay periodic dues – a deauthorization election. Under Section 8(a)(3) of the National Labor Relations Act, herein the Act, the Union loses the right to enter into such an agreement only if "the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement . . . ." In other words in a unit such as this unit with 355 eligible voters the number of votes needed was a minimum of 178 in favor of the ballot question. The votes cast in favor of the ballot question was just 51, which is not even a majority of the votes cast and not even close to a majority of the eligible voters.

OBJECTIONS TO UNION CONDUCT

Objection 1

In its literature dated September 19, the Union threatened that it could and probably would pull out and that wages and benefits would then be reduced. The Union also distributed a 9-page handout dated September 21 which stated, "The decision and order of a previous De-Authorization Election of another Union. An example of what could happen." Union supporters prior to the election told employees that their wages would drop to 13 dollars an hour if employees voted yes.

Objection 1 has to do with the two documents, Petitioner's Exhibit 1, which is attached to this decision of Appendix 1, and Petitioner's Exhibit 2, which Petitioner testified were notices

that were posted at the facility. He didn't testify as to where they were posted or how many potential employees saw them, but it doesn't really matter. The law is very clear that the information contained within these two notices is appropriate information that the Union could disseminate to the employees prior to the election. The second document, Petitioner's Exhibit 2, was merely a statement that said attached is an NLRB case that the Union believes is an example of what could happen at the Ronald Reagan Building if the de-authorization petition was successful. The Board case was attached without any changes being made to it. Petitioner's Exhibit 1 has some statements in it as to what might have occurred if the employees voted to deauthorize. In fact, the statements made in this flier track those and are comparable to those that were discussed in the Board's decision in *Chicago Truck Drivers, Local 101 (Bake-Line Products)*, which was attached to Petitioner's Exhibit 2. That case is reported at 329 NLRB 247 (1999). Petitioner can read that case however he wants, but that case clearly stands for the proposition that a union may disclaim its role as a collective bargaining representative and may do so even in apparent response to the employees filing a deauthorization petition or the loss of a deauthorization election. The Board held that a union may so inform employees without providing them with objective evidence that its continued representation of them would be infeasible. Continuing on, the Board said, it would apply these principles to the instant case. The Board found that the Union lawfully informed employees that if it lost the deauthorization election decisively it would consider disclaiming recognition. The Board found the union lawfully informed the employees of the reasonable possible consequences of its disclaimer. Under the facts of this case and the law I recommend that Objection 1 be dismissed.

Objection 2

The wording of the election promoted the idea that no supervisory personnel could participate. At the Ronald Reagan building, a great many employees are supervisors at a lower level and are covered by the collective bargaining agreement up to the rank of Captain. Only salaried supervisory personnel would not be allowed to vote.

Objection 2 alleges that the wording on the election petition promoted the idea that no supervisory personnel could participate. There is no evidence in the record that anyone was confused. There are only statements made by Petitioner that he believes some people were confused. Regardless, as the record clearly shows, the language is to who was eligible to vote, i.e., who was in the bargaining unit, not only tracks the collective bargaining agreement scope of recognition clause, but it also was specifically agreed to by the Petitioner in signing the stipulated election agreement. By doing so, he has waived his right to now argue that somehow that was an inappropriate bargaining unit description. Any objection to that language that he had or if he believed that it should have been changed should have been taken care of prior to his signing the stipulated election agreement. Simply saying that he didn't like it and then signing his name is not enough. I recommend that Objection 2 be dismissed.

Objection 3

The Union removed Petitioner's literature from Union bulletin boards and from the GSA area.

Objection 3 alleges that the Union removed Petitioner's literature from Union bulletin boards and from the GSA area of the Ronald Reagan Building. Petitioner directly testified that he posted nothing on union bulletin boards. He directly testified that he has no idea as to who may have removed his literature from the GSA area or anywhere else, be they on Union bulletin boards or elsewhere. There is no evidence supporting Objection 3. Accordingly, I recommend that Objection 3 be dismissed.

Objection 5

Union members immediately outside the voting area told employees that they had better vote no or their wages would revert down to $13 per hour from the current level. This constitutes illegal campaigning in the immediate vicinity of the voting area.

Objection 5 alleges that Union members immediately outside the voting area told employees that they had better vote no or their wages would revert down to $13 per hour from the current level. This is an allegation of improper campaigning in the voting area. There are two problems with this. Number one, there's absolutely no evidence of Union agency as it affects this. There's no claim that it was a Union agent who campaigned in the immediate vicinity of the voting area. All we know is that there were some employees, who engaged in a discussion outside the voting area, which you might expect them to do as they came to vote. The other problem is the deauthorization petition needed 127 more votes to affect the outcome of the election. Six employees engaged in this conversation. Whether or not the conversation was proper, whether or not there were appropriate statements made doesn't really matter. Those six voters cannot affect the outcome of this election. I recommend that Objection 5 be dismissed.

Objection 6

Some officers did not understand the implications of yes or no votes based on the wording of the ballot. In part this was due to the disappearance of Petitioner's literature from the GSA work area and company bulletin boards.

Objection 6 alleges that "some officers did not understand the implications of yes or no votes based on the wording of the ballot. In part this was due to the disappearance of Petitioner's literature from the GSA work area and company bulletin boards." There is absolutely no evidence in the record that officers did not understand the implications of a yes or no vote. Regardless, Petition has waived his right to argue this because he specifically signed a stipulated election agreement that contained the wording that was to be placed on the ballot. I recommend that Objection 6 be dismissed.

OBJECTIONS TO EMPLOYER CONDUCT

Objection 4

In the GSA work area the notice by the NLRB was posted in a place (on the back of the entrance door) where it would be missed by many officers especially when the door was not closed as they entered the GSA office. Right on the notice was a requirement that it be posted on the company bulletin board. This requirement was not met.

There are two objections to Employer conduct. Objection four 4 alleges that "in the GSA work area the notice by the NLRB was posted in a place (on the back of the entrance door) where it would be missed by many officers, especially when the door was not closed as they entered the GSA office. Right on the notice was a requirement that it be posted on the company bulletin board. This requirement was not met."

The evidence shows that there was, by Petitioner's own statement, at least one notice in the GSA area. Union President Charmise Wicks credibly testified that there was a notice posted in the women's locker room in the GSA area. There is also disputed testimony as to whether or not there was a notice posted outside the break room which could be seen by

employees as they walk into the break room in the GSA area. However, there was no testimony from any employee in the bargaining unit, who works in the GSA area or elsewhere that he or she was unaware of the election or failed to see a notice. There was at least one notice posted in the GSA area. It sufficed. There were notices posted throughout the building. The bottom line is no one in the unit - not even one person – came forward to say I never knew about the election because I saw no notice posted or for any other reason. I recommend that Objection 4 be dismissed.

Objection 7

The voting list included the names of at least 24 individuals who were not longer working at the Ronald Reagan Building as of the day of the election.

Objection 7 alleges that "the voting list included the names of at least 24 individuals who were no longer working at the Ronald Reagan Building as of the day of the election." Apparently none of these people tried to vote, but regardless if they did, they weren't challenged. In addition, if there were ineligible voters due to changes in the Excelsior list perhaps there were a number of people who left employment after the payroll date and before the election date it doesn't affect the outcome of the election. At most all you would do is subtract from the 355 total voters the 24 individuals. That would take it down to about 331, still leaving Petitioner 115 votes shy of affecting the outcome of this election. Furthermore, there's no record evidence in fact that there were 24 individuals who were on the eligibility list who in fact were no longer eligible to vote. We have testimony from the Petitioner, who says that he thought there were, but we don't have names, we don't have dates, we don't have circumstances with respect to their employment. They're not identified. Accordingly, I recommend that Objection 7 be dismissed.

CONCLUSIONS

Based on the foregoing, I recommend that all Objections be dismissed and that this matter be remanded to the Regional Director for Region 5 for the issuance of the appropriate Certification of Representative.

Within 14 days from the issuance of this decision, any party may file with the Board in Washington, D.C., an original and seven copies of exceptions thereto. Immediately upon filing such exceptions the party filing the same shall serve a copy thereof on the other parties and shall file a copy with the Regional Director of Region 5. If no exceptions are filed, the Board will adopt the recommendations set forth herein.

Dated, Washington, D.C., December 1, 2005.

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Martin J. Linsky
Administrative Law Judge